



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01131/2019
PA/01139/2019

THE IMMIGRATION ACTS

Heard at Bradford
On 14 August 2020

Decision & Reasons Promulgated
On 18 March 2021

Before

UPPER TRIBUNAL JUDGE HANSON

Between

AJ

AA

(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Mahmood instructed by Primus Solicitors.

For the Respondent: Mr Diwnycz Senior Home Office resenting Officer.

DECISION AND REASONS

1. By a decision dated 15 August 2019 a Judge of the Upper Tribunal found the First-tier Tribunal had erred in law in a manner material to its decision to dismiss the appeal and gave directions for the further hearing of the appeal. It is recorded at [11] of that decision that the appellants' claims as to what happened in Iraq are accepted and are preserved findings and that it was only necessary to

make findings on the appellants' ability to obtain CSIDs and to internally relocate.

2. The matter came before the Upper Tribunal next on 14 August 2020 for a Resumed hearing. Following consideration of the written and oral evidence a decision was remotely promulgated on 18 August 2020, electronically. On 4 February 2021 the appellants representatives contacted the Upper Tribunal asking for developments as they had heard nothing further and had not received the decision. An investigation within the Upper Tribunal has resulted in a statement that there was no record of the determination sent on 18 August 2020 on the system. As a result, the decision has had to be re-promulgated for which the Tribunal offers its apologies to the parties. The cause of the failure within the IT system is not known.

Background

3. The appellants are a father and son both nationals of Iraq. The first appellant was born on 1 January 1977. Dependents upon the first appellants application are his wife and three daughters. The second appellant was born on 4 December 1999.
4. Both appellants are of Kurdish ethnicity and nationals of Iraq. The judge's findings in relation to the merits of the appeal are set out at [66] of the decision of the second appellant (PA/01139/2019) in the following terms:

66. I note the Respondent accepts that the Appellant is both Iraqi and a Kurd. Other than that they don't accept the claim that relationship with [H] and are critical of issues, such as the interview content and lack of photographs, etc. I have to say that I was particularly struck with the evidence of the child. [S] and found her to be entirely credible in remembering aspects as well as finding, against the lower standard, the rest of the family who gave evidence credible and although there were discrepancies in their various accounts these were just minor discrepancies and not ones that, against the lower standard, led me to doubt their position with regard to the basis of the Appellant's appeal regarding being a member of a victim of honour crime. Indeed he claimed asylum almost as soon as he arrived in the United Kingdom albeit that (and Section 8 must be taken into account here and I do weigh it in the balance) he had made a claim in Italy but of course had family who had been living in the United Kingdom and I accept his explanation that he wanted to move on from Italy and indeed from France to get to the United Kingdom. There were striking factors such as the issue of various witnesses, remembering the presence of a Kalashnikov rifle and I accept that errors in an interview are very likely to have been down to the connection problems that are shown on the paperwork with reference to the interpreter. His asylum claim, with regard to membership of the particular social group, is accepted by me in regard of that aspect.

5. The family home is in Kirkuk in Iraq. The basis of the First-tier findings is the second appellant's relationship with his girlfriend in Iraq who became pregnant, resulting in problems between the families, during which the second appellant's girlfriend's family threatened to harm him and refused to allow him to marry

her. It was claimed the girlfriend's family had attended at his family home and threatened his life and that he feared the family would harm him upon return to Iraq.

Discussion

6. The First-tier Tribunal Judge was aware that it was necessary to consider whether the parties could secure the relevant documentation. At [67 - 69] of the First-tier Tribunal decision relating to the second appellant it is written:
 67. I must therefore turn to considering whether he can return to Iraq and in his evidence indeed he accepted that he could go to the Embassy in the UK and obtain a CSID card. He doesn't have one at the moment but he has family to assist him and stated in his own evidence that he could go to London and get such a card, which would be important for him returning to Iraq. Since the 2012 British Embassy confirms that assistance can be provided and since 2014 three documentation centres are available,
 68. I must however therefore turn to looking at the issue of internal relocation and future fear. I take into account that he doesn't speak Arabic and would have some difficulty in Baghdad and has no family in the KRI and is of course from Kirkuk, an area that, until the case of Qaraman (referred to above) met the Article 15C guidance.
 69. I turned to look at whether he internally relocate. Whilst he has accepted that he can get a CSID card to ease return but I note that he's a Kurd. There was no evidence of political influence or widespread conduct of those looking for him or the of the disgruntled family involved in the honour crime being able to trace him should he return. Indeed, no credible evidence was before me that they are now really attempting to do so, though there was credible evidence that they had sought to harm him in Iraq. The father had lost his CSID en route to the UK. The father did not know whether they were still looking for his son.
7. The judge of the First-tier Tribunal records at [40] that the appellant in his oral evidence was not sure about when he had last been in touch with family in Iraq, but that he had not contacted his family since he had been in the United Kingdom.
8. In his asylum interview dated 13 June 2018 the first appellant was asked whether he had any family in Iraq to which he replied "yes". When asked when he was last in contact, he confirmed that he spoke to his father once a month or once in two months.
9. In his witness statement dated 15 February 2019 the first appellant claimed he did not have any family in Baghdad or know anyone living there. At [29] it is written:
 29. I do have contact with my family in Kirkuk. It is mainly on my father's side. I ring them around once every month or two. I also have some contact with my sisters. However, it is not regular. Any contact depends on the Internet. The Internet is not regular in Iraq.

10. The second appellant in his witness statement of 15 February 2019 at [29] writes:

29. I do not have any contact with anybody in Iraq. I understand my dad has contact with my paternal side of the family, including my grandparents in Kirkuk. I have not spoken to them. I have never worked. At the moment I am studying ESOL in college in the UK.

11. Considering the first question of whether the appellants will be able to redocument themselves, it is accepted that following the introduction of the new Iraqi identity card and the withdrawal of the CSID that it was not established the appellants will be able to obtain a replacement CSID in the UK.

12. Annex I to the respondents June 2020 CPIN dealing with such issues reads: Information obtained from the Home Office's Returns Logistics Department - April 2020 Failed Asylum Seekers (FAS) Laissez Passers (LPs)

...

Civil Status Identity Cards (CSIDs)

1) Please can you describe the process of obtaining a Civil Status Identity Card for a failed asylum seeker from the Iraqi Embassy in London in as much detail as possible (please include details of what documents or information are required, timescales etc).

CSID cards are being phased out and replaced by INID (Iraq National Identification) cards. It is not currently possible to apply for an INID card outside of Iraq. As a result, the Iraqi embassy in London are advising their nationals in the UK to apply instead for a 'Registration Document (1957)' which they can use to apply for other documents such as passports or an INID card once they have returned to Iraq.

The registration document (1957) must be applied for on the applicant's behalf by a nominated representative in Iraq. In order to start the application, the individual requiring documentation would normally provide at least one copy of a national identity document (see above list Q1, FAS) and complete a power of attorney (to nominate a representative in Iraq) at the Iraqi embassy along with the embassy issued application forms. If they have no copies of identity documents they also would need to complete a British power of attorney validated by the FCO and provide parents names, place and date of birth to their nominated representative in Iraq.

Once issued the nominated representative will send the registration document (1957) to the applicant in the UK. The process takes 1-2 months.

The HO cannot apply for documentation other than Laissez Passers on someone's behalf but the embassy is willing to check to see if the individual already holds documents and provide copies if necessary.

13. The existence of family in Iraq, including the first appellant's father, shows the existence of a male relative of the same family. It was not made out that the appellants will not be able to find a nominated representative in Iraq. It was not made out the necessary power of attorney validated by the FCO could not be secured. The point recorded by the First-tier Tribunal regarding the second appellant's willingness to be obtain a CSID from the Embassy in the United Kingdom means that he must be aware of the family book details as, indeed, will his father. It is also clear that family in Iraq will have valid documents with them which will enable any 'forgotten' details to be obtained.
14. Insufficient evidence was provided at the hearing and insufficient submissions made to establish that the appellants will not be able to obtain a Registration Document (1957), which will enable the respondent to return them to Iraq.
15. I do not accept the submission the appellants are undocumented and cannot obtain replacement documents to be made out on the evidence. This will include, with the assistance of family members and the Registration Document (1957), passports.
16. The appellants are from Kirkuk, which is not within the IKR. The appellants will therefore be returned to Baghdad in accordance with the Secretary of State's policy of returning those who will not return voluntarily to Baghdad airport.
17. The appellants have no family members in Baghdad, do not speak Arabic, and there is no evidence that they have viable contacts or community ties within that area. The scope of the hearing noted by Upper Tribunal Judge Plimmer in the error of law finding of 12 August 2019, is limited to the appellant's ability to obtain a CSID, which I have dealt with above, and internal relocation. This illustrates clear acceptance that the appellants cannot return to Kirkuk in light of the preserved findings relating to real risk on return.
18. In SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 400 (IAC) it was said:
 - (i) Where internal relocation is raised in the Iraqi context, it is necessary to consider not only the safety and reasonableness of relocation but also the feasibility of that course, in light of sponsorship and residency requirements in operation in various parts of the country. Individuals who seek to relocate within the country may not be admitted to a potential safe haven or may not be permitted to remain there;
 - (ii) Relocation within the Formerly Contested Areas. With the exception of the small area identified in section A (i.e. North of Biaji in Salah-El-Din), the general conditions within the Formerly Contested Areas do not engage Article 15 QD(b) or (c) or Article 3 ECHR and relocation within the Formerly Contested Areas may obviate a risk which exists in an individual's home area. Where relocation within the Formerly Contested Areas is under contemplation, however, the ethnic and political composition of the home area and the place of relocation will be particularly relevant. In particular, an individual who lived in a former ISIL stronghold for some time may fall under suspicion in a place of relocation. Tribal and ethnic differences may preclude such

relocation, given the significant presence and control of largely Shia militia in these areas. Even where it is safe for an individual to relocate within the Formerly Contested Areas, however, it is unlikely to be either feasible or reasonable without a prior connection to, and a support structure within, the area in question;

- (iii) Relocation to Baghdad. Baghdad is generally safe for ordinary civilians but whether it is safe for a particular returnee is a question of fact in the individual case. There are no on-entry sponsorship requirements for Baghdad but there are sponsorship requirements for residency. A documented individual of working age is likely to be able to satisfy those requirements. Relocation to Baghdad is likely to be reasonable for Arab Shia and Sunni single, able-bodied men and married couples of working age without children and without specific vulnerabilities. Other individuals are likely to require external support, ie a support network of members of his or her family, extended family or tribe, who are willing and able to provide genuine support. Whether such a support network is available is to be considered with reference to the collectivist nature of Iraqi society, as considered in AAH (Iraq).

19. The respondent's June 2020 CPIN at 4.1.1 records: *"The British Embassy in Baghdad (BEB) observed in 2012 that to return to Iraq, a person needs a valid passport, expired passport or laissez-passer (an emergency travel document issued by an Iraqi Embassy). The Iraqi authorities introduced these procedures in October 2011. EU letters are currently not accepted for any returns to Baghdad."*
20. I find it was not made out any member of this family would not be able to obtain a laissez passer, which will enable them to be returned to Baghdad.
21. It was not made out to the appellants would not have sufficient resources to enable them to accommodate themselves initially on return to Baghdad, bearing in mind funds that can be made available as per the country guidance and access to family support.
22. The appellants state their religion is Sunni Islam, but the first appellant is not single and is part of a married couple with children. Whilst the second appellant is a single adult he forms part of the family unit. It was not made out there is a support network from family, extended family or tribe willing to provide genuine support for this family unit in Baghdad, meaning it has not been made out it is reasonable to expect the family unit to internally relocate to Baghdad.
23. In relation to internal relocation to the IKR all the members of the family are Kurdish.
24. In SMO it was found:
- (i) For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi National Identity Card (INID), the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or

Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh;

- (ii) P is unable to board a domestic flight between Baghdad and the IKR without either a CSID, an INID or a valid passport. If P has one of those documents, the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh;
- (iii) P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or an INID. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor an INID there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command;
- (iv) Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds;
- (v) Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory;
- (vi) If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis;
- (vii) For Kurds without the assistance of family in the IKR the accommodation options are limited:
 - (i) Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed

- to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;
- (ii) If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;
 - (iii) P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;
 - (iv) In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations;
 - (v) Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:(i)Gender. Lone women are very unlikely to be able to secure legitimate employment;(ii)The unemployment rate for Iraqi IDPs living in the IKR is 70%; (iii)P cannot work without a CSID or INID; (iv)Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him; (v)Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available; (vi)If P is from an area with a marked association with ISIL, that may deter prospective employer.
25. As found above the appellants will have the necessary travel documents to enable them to fly or travel by land to the IKR. It was not made out that they will be refused entry. It was not made out they will not be able to benefit from the funds available to a returnee and, as noted above, there is evidence of family members in Iraq. Insufficient evidence was provided, or submissions made to establish that the appellants would not be able to contact their family members to arrange suitable assistance for them in gaining access to accommodation and/or to readjusting to life within Iraq.
26. The first appellant was employed in Iraq as a taxi driver and in his evidence refers to Sulamanyah where he would take passengers to and from. It was not made out the first appellant could not resume working as a taxi driver for which

- he has not only experienced but language skills and the necessary documents to enable him to do so, or could not support his family from the income earned. The second appellant is a young healthy individual who failed to show he could not secure some form of employment in Iraq to contribute to the family finances, even in light of the findings in SMO regarding the unemployment rates in the IKR.
27. The main thrust of the submissions on the appellant's behalf at the resumed hearing focused upon a claim they could not redocument themselves and so could not return to Iraq rather than the impact of return.
 28. There is nothing in the evidence to support a claim that those who may be seeking the second appellant for revenge have sufficient political influence or contacts to enable them to discover the second appellant has returned to Iraq and settled in the IKR. As noted by the First-tier Tribunal, nothing was given in the evidence on that occasion to show that those the second appellant fears were attempting to trace him or sought to harm him in Iraq.
 29. There is no evidence that there is a real risk pursuant to Article 15(c) of the Qualification Directive in the IKR or anything in the individual profile of any member of this family indicating an enhanced or increased risk of harm within the IKR.
 30. I do not find it made out the appellants would not be able to support themselves, establish themselves, or remain in the IKR. There is clearly availability of family support which the appellant did not establish is not a credible finding. It was not shown sufficient support will not be available from any of the family members identified.
 31. Whilst there is a real risk in Kirkuk, I find it has not been established it is unreasonable or will be unduly harsh in all the circumstances for this family to internally relocate to the IKR.
 32. Paragraph 339O of the Immigration Rules, which is intended to incorporate the Directive, states:(i) The Secretary of State will not make: (a) a grant of asylum if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country. (ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person. (iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return.
 33. In light of the above provisions and the findings made, the protection appeal must be refused.
 34. In relation to the human rights aspect; the articles 2 and 3 claims fall with the protection claim. No credible Article 15(c) QD risk is made out. The family will

be returned as a unit means there will be no breach of article 8 ECHR family life, leaving only private life in the UK as a protected right.

35. Considering the provisions of Section 117B of the Nationality, Immigration and Asylum Act 2002 and the question of whether any interference in that private life is proportionate to the legitimate aim relied upon by the Secretary of State, the appellants do not set out in detail, if at all, details of the protected right the interference with which will result in a breach of article 8. The Secretary of State has established that any interference with the private life of any member of this family unit will be proportionate to the legitimate aim relied upon. On that basis, the appeal fails pursuant to article 8 ECHR too. Article 8 does not allow a person to choose where they wish to live.

Decision

- 36. I dismiss the appeal.**

Anonymity.

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated: 18 August 2020 Redated: 16 March 2021